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CHARLES ELMORE CROPLEY
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IN THE

Supreme Court of the United States

OCTOBER TERM, 1952

No. 307 "B"

W. O. BOWERS, JR. AND W. D. GORDON,
Petitioners and Appellants below,

v.

NONA-FLETCHER MINERAL COMPANY,
Respondent and Appellee below.

Petition "B" for Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit

W. O. BOWERS, JR., and
W. D. GORDON,
In Pro Per

ALPHA LAW BRIEF CO., HOUSTON

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TO THE HONORABLE THE SUPREME COURT OF THE UNITED STATES:

YOUR PETITIONERS RESPECTFULLY SHOW

I.

Statement of the Case

On July 18, 1952, the United States Court of Appeals for the Fifth Circuit in Cause No. 13,804 styled G. D. BATEN, ET AL., *Appellants,* v. NONA-FLETCHER MINERAL COMPANY, *Appellee,* affirmed the judgment of the United States District Court for the Eastern District of Texas which dis-

missed appellants' cause of action for want of jurisdiction. (Record, pp. 1-73)

Printed briefs were seasonably filed and oral argument presented in the Court of Appeals on April 21, 1952, and the dismissal affirmed in an opinion by Strum, Circuit Judge, upon the ground that the primary relief sought was the "cancellation of two deeds" by Nona-Fletcher Mineral Company and that the grantees, therein, who were citizens of Texas, were indispensable parties. "Their joinder will therefore destroy diversity, and with it the sole ground for federal jurisdiction of this suit. In these circumstances the suit was properly dismissed for lack of indispensable parties." (Opinion, p. 5)

See Bill of Complaint in Petition "A" filed herein.

II.

Reasons for Allowance of the Writ

1. The Court of Appeals correctly states in the first paragraph of its opinion the relationship of the parties plaintiff, G. D. Baten a stockholder and W. O. Bowers, Jr. and W. D. Gordon attorneys of Nona-Fletcher Mineral Company, but makes basic error in the second paragraph in its statement of the cause of action, to-wit: "As plaintiffs below they sued said corporation to 'annul' conveyances by the corporation of its mineral interests." (Opinion, pp. 1, 2)

The latter statement is not only unsupported by the record but is expressly and affirmatively contradictory of it and denies these petitioners their rights granted to them by law and guaranteed by the Constitution, Article 3, Section 2. (Record, pp. 1-22; Brief for Appellants, pp. 1-2)

The cause of action by these petitioners Bowers and Gordon is concisely stated in these words: "Hence, your

Petitioners ask your Honor, upon a hearing of this cause to determine not only the invalidity of the transactions above detailed but also to determine and fix by declaratory judgment what is a reasonable and competent compensation for the services of these Petitioners, and that upon such determination that the matter of fees due Petitioners be enforced as in law and in equity they are entitled to." (Bill of Complaint, R. p. 18)

2. G. D. Baten, the plaintiff stockholder, asserts a cause of action entirely apart from the attorney's cause of action asserted by these petitioners as creditors for attorney's fees. The defendant corporation is the only "indispensable" party under his bill of complaint praying that an injunction be issued, that a receiver be appointed and that such other and further relief be granted as he may be entitled to receive. The petitioners as creditors join in such prayer for injunction and receivership. (Rules 18, 19, FEDERAL RULES OF CIVIL PROCEDURE, "Brief for Appellant Stockholder") If after hearing, the facts would not support the issuance of an injunction or the appointment of a receiver, these petitioners would not thereby be denied their right to be heard on their cause for legal services rendered said corporation, detailed in the bill of complaint (R. pp. 1-20), even though said corporation had disposed of all its assets by *ultra vires* acts of its officers and directors or was insolvent

3. These petitioners have detailed in the bill of complaint their employment by the respondent corporation, the services so rendered as its attorneys to preserve its property against a void and baseless title claim (also reflected by the record filed in said Court of Appeals for the Fifth Circuit in Cause No. 13,354, styled NONA-FLETCHER MINERAL COMPANY v. JAMES F. PARKER ET AL.), and the *ultra vires* acts of said corporation's officers and directors in discharging petitioners as attorneys without complaint as to their

conduct and services and without compensation, employing other attorneys to dismiss the aforesaid cause, conveying certain mineral interests of the corporation without consideration (in settlement of said void and baseless claim) and distributing its remaining mineral interests to its stockholders. (R. pp. 1-20; Opinion, p. 4)

These petitioners are entitled to be heard upon the bill of complaint for compensation, and the only "indispensable" party to such cause of action is the respondent Delaware corporation and, if the facts support their allegations of *ultra vires* acts aforesaid by its officers and directors, an injunction should be issued to restrain them from further control of the corporation, and a receiver should be appointed to recover or bring suit to recover for the benefit of petitioners as creditors and all other creditors from the grantees of said corporation's two deeds.

4. This action is also brought by petitioners' motion filed herein on March 8, 1952, to set aside the order of dismissal by the Court of Appeals for the Fifth Circuit on March 13, 1951, of Cause No. 13,354, NONA-FLETCHER MINERAL COMPANY v. JAMES F. PARKER ET AL., under the express authority of the judicial act and amendment May 23, 1949, U. S. STATUTES, Title 28, Ch. 51, Secs. 2201-2, and Ch. 21, Secs. 451-2. *(See "Ancillary Brief and Motion for Appellants" p. 12, and also "Memorandum by Appellants Supporting Ancillary Brief and Motion", p. 1, citing Rule 60(b) as amended December 27, 1946, construed by the Supreme Court of the United States in* SPRAGUE v. TICONIC NATIONAL BANK, *307 U. S. 161, and* KLAPPROTT v. U. S., *335 U. S. 601)*

WHEREFORE, your petitioners pray that a WRIT OF CERTIORARI issue under the seal of this Court directed to the Court of Appeals for the Fifth Circuit, commanding said Court to certify and send to this Court a full and

complete transcript of the record and of the proceedings of said Court of Appeals had in the case numbered and entitled on its docket No. 13,804, G. D. BATEN ET AL., *Appellants*, v. NONA-FLETCHER MINERAL CO., *Appellee*, to the end that said cause may be reviewed and determined by this Court as provided for by the statutes of the United States, and that the judgments of said Court of Appeals and the District Court be reversed and the cause, upon admitted and indisputable facts, be adjudicated in favor of petitioners, as presented in their briefs and in conformity with the records as therein presented; and in the alternative, that said Court of Appeals be ordered to vacate its decree of affirmance and render such judgment for plaintiffs (appellants) as required by the indisputable facts of records therein pending and the justice of the case. Petitioners pray for such further and other relief as they may be in law and in equity entitled to receive.

W. O. BOWERS, JR., and
W. D. GORDON,
In Pro Per

I hereby certify that I have delivered a copy of this petition to Mr. Will E. Orgain, Attorney for Respondent, before presenting same in this court. This August _____, 1952.

W. O. BOWERS, JR.